

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13703 of 2017

Arising Out of PS.Case No. -184 Year- 2015 Thana -BIBHUTIPUR District- SAMASTIPUR

=====

Deepak Kumar Roy @ Deepak Kumar, Son of Ram Chandra Roy, Resident of
Village-Basadhiya, P.S. Dalsingsarai, District-Samastipur

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner : Mr. Sada Nand Roy, Adv.

For the Opposite Party : Mr. J.N. Thakur, APP.

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 12-05-2017

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The present application has been filed for quashing of
order dated 25.1.2017, passed by the learned Additional Sessions
Judge, Rosera in S.T. No. 329 of 2016, arising out of Bibhutipur P.S.
Case No. 184 of 2015, whereby the prayer for release of Bolero
vehicle bearing Registration no. BR 09 R 5396 has been rejected.

The prosecution case would unveil that one Dilip
Kumar got his Fardbeyan recorded by the S.I. C.S. Kumar, S.H.O.,
Bibhutipur in the District of Samastipur at Sub Divisional Hospital,
Dalsinghsarai, at 7.35 P.M. on 28.8.2015, to the effect that on the
same day at 12.45 P.M., the informant was going from his cloth shop



to Rosera by his Discover Bajaj motorcycle but as soon as he reached Mustafapur, one Bolero vehicle, without a number plate came and obstructed his way. Thereafter, four persons came out from the Bolero vehicle and started assaulting the informant, blindfolded him and injured him with the butt of a pistol. They took the informant to some distance and thereafter they released him at a deserted place. The accused persons took six thousand rupees out from the pocket of the informant along with a Nokia mobile and also took the motorcycle of the informant. The accused persons gave back the driving licence, owner book and one hundred rupees to the informant. Consequently, Bibhutipur P.S. Case No. 184 of 2015 was registered under section 394 IPC against four unknown criminals.

During investigation, one Munna Jha was arrested and he confessed his guilt before the police and stated about the Bolero vehicle of the petitioner being used in the aforesaid occurrence, which was consequently seized by the police. Thereafter, the petitioner filed an application for release of the vehicle in question on 4.1.2016, stating therein that the petitioner is the sole owner of the seized vehicle which is lying unattended in the premises of Dalsinghsarai police station and that he is ready to furnish surety bond of any amount.

The learned Additional District and Sessions Judge,



Rosera, called for a report from the Officer Incharge of the Rosera Police station. The Officer Incharge, Bidupur police station, submitted a report dated 19.12.2016 to the learned Additional Sessions Judge, Rosera, stating that the petitioner is the sole owner of the vehicle in question and the investigating agency has no objection in release of the vehicle in his favour, in case any order is passed in this regard by the learned court.

It is further submitted that the petitioner produced registration and insurance documents as well as tax token including Voter identity card in proof of the ownership of the vehicle. No rejoinder was filed by the prosecution, however, the learned APP submitted that the seized vehicle has been used in the crime, hence, unless it is exhibited, it should not be released.

The learned Additional Sessions Judge, Rosera, vide order dated 25.1.2017, rejected the prayer for release of the vehicle on the ground that though the vehicle in question is registered in the name of the petitioner and tax has been paid up to 5.8.2013, but the Insurance Policy has already expired on 5.8.2016 and from the perusal of the case diary, it appears that at the time of occurrence the petitioner was driving the vehicle, but he has not submitted the driving licence. Hence, the prayer for release of the vehicle was rejected on two grounds, i.e., expiration of insurance of the vehicle in



question and that the petitioner did not submit his driving licence.

Chapter XXXIV of the Cr.P.C. deals with the disposal of the property. Section 451 Cr.P.C. enables the court to pass order for custody and disposal of property pending trial in certain cases whereas section 452 enables the court to order for disposal of the property at conclusion of trial. Section 457 prescribes the procedure to be adopted by the police upon seizure of property. The above three provisions need to be quoted for the proper appreciation of the issue involved in the present case. They read as follows:

“451.Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

452.Order for disposal of property at conclusion of trial.-
(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the



commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.



457.Procedure by Police upon seizure of property.- (1)

Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

The Apex Court in the case of *Sunder Bhai Ambalal Desai Vs. State of Gujarat*, reported in (2002) 10 Supreme Court Cases 283, while considering the issue of exercise of power of release of the vehicle and goods during enquiry and trial or on conclusion, explained the provision of section 451 Cr.P.C. as follows:

“Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-



- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.”

The Apex Court further directed for exercise of jurisdiction under section 451 Cr.P.C. expeditiously and judiciously and enumerated the various purposes being served in such exercise. Paragraph 7 reads as follows:

“In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

In order to safeguard the interest of the prosecution the



Apex Court in the case of Sunderbhai (supra) directed the measures to be adopted giving instances as elaborated in paragraph 12 of the judgment. Paragraph 12 reads as follows:

“For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchanama of such articles:

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.”

The Apex Court while dealing with the release of the vehicle seized by the police or abandoned or the vehicle which are recovered on complain of theft, observed in the case of Sunderbhai (supra) in the following manner. Paragraph nos. 17 and 18 read as follows:

“17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending



hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

Dismayed with the fact that directions given in the case of Sunderbhai (supra), the Apex Court and in the case of General Insurance Council & Anr. Vs. State of Andhra Pradesh and Ors. (2010) 6 Supreme Court Cases 768, while dealing with the issue of custody and disposal of vehicles seized in accidents, has dealt in paragraph nos. 13 to 15, in the following words:

“13. In our considered opinion, the aforesaid information is required to be utilized and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions



issued by this Court in *Sunderbhai Ambalal Desai (supra)* considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the



application for release of the recovered vehicle.

Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.

15. In case any non-compliance is reported either by the



Petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. With the aforesaid directions, this writ petition stands finally disposed of.”

Hence, in the General Insurance Council (supra), the Apex Court has given certain directions with regard to the seized vehicles which are required to be noticed.

The Apex Court finally held that the seized vehicles are kept in various police stations. They not only occupy substantial space in the police station but they are subject to the natural decay since they are kept in open space and further more, the valuable part are at risk of being removed.

In the present case, admittedly, there is no dispute that the vehicle is registered in the name of the petitioner. The prayer for release has been rejected on two grounds viz., the petitioner did not produce the driving licence and the seized vehicle’s insurance expired on 5.8.2016. Chapter II of the Motor Vehicles Act deals with licensing of drivers of motor vehicles. Section 3 of the Act prescribes the necessity for driving licence which reads as follows:

“3. Necessity for driving licence. –(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a



transport vehicle [other than a motor cab hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

2. The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.”

A perusal of the aforesaid provision depicts that having the driving licence is a pre-condition for driving and not for keeping/owning the vehicle. Hence, on this score, the order impugned appears to be perverse, as a person may be the owner of a vehicle without having driving licence and the vehicle has to be released to the rightful owner. Section 181 of the Act prescribes the punishment for driving a vehicle without licence which reads as follows:

181. Driving vehicles in contravention of section 3 or section 4. - Whoever, drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

Hence, if a person drives without licence, he will be penalized under the Act for which the learned court below was not supposed to be concerned for non-compliance or violation of Section 3 of the Act while considering the question of release of the vehicle in question.

Section 146 of the Act mandates that no person shall



use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is force in relation to the use of the vehicle by that person or that other person. Section 146 reads as follows:

“146. Necessity for insurance against third party risk.

–(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

[Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991.]

2.Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise.

3.The appropriate Government may, by order, exempt from the operation of sub-section (1) any vehicle owned by any of the following authorities, namely:--

- a. the Central Government or a State Government, if the vehicle is used for Government purposes connected with any commercial enterprise;
- b. Any local authority;
- c. Any State transport undertaking:

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.”

Section 196 of the Act prescribes punishment for



driving uninsured vehicle, which reads as follows:

“196. Driving uninsured vehicle.-Whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of section 146 shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both.”

Hence, in view of this Court, since the insurance of the vehicle in question was valid up to 5.8.2016, then the learned court below ought to have directed the petitioner to get the insurance of the vehicle renewed because without insurance the vehicle could not have been taken from the police station to the petitioner's place as the Section 146 of the Act mandates a valid insurance for using vehicle at public place.

It is submitted by learned counsel for the petitioner that the petitioner produced all the relevant documents and the investigating agency had no objection for release of the vehicle in question. However, the petitioner is ready to get the insurance of the vehicle renewed.

The petitioner has not made the informant as opposite party in the present application and has also not placed the petition for release, on record. In the present case, this not in dispute that the



vehicle in question has been claimed by none except the petitioner. More over, the Officer Incharge of Rosera Police station, in the report contained in Annexure 2, has admitted that the petitioner is the owner of the vehicle and he has no objection in release of vehicle in question in favour of the petitioner. Hence, at this stage this Court is not inclined to get the informant impleaded as opposite party which will further unnecessarily delay the issue of release of the vehicle in question.

Considering the rival submissions of the parties, this is not in dispute that the vehicle in question was registered in the name of the petitioner on the alleged date of seizure. So far as the question that the petitioner has not produced any driving licence is concerned, the release of the vehicle on that ground cannot be denied.

In view of the discussions made above, this Court is of the opinion that no useful purpose would be served, if the vehicle is left to rot and deteriorate in the premises of the police station at Dalsingsarai.

In view of the above discussion, the order dated 25.1.2017, passed by the learned Additional Sessions Judge, Rosera in S.T. No. 329 of 2016, arising out of Bibhutipur P.S. Case No. 184 of 2015 is set aside. It is expected from the learned Additional Sessions Judge, Rosera to get the photograph of the vehicle in question taken



along with Xerox copy of registration and insurance papers submitted on affidavit duly authenticated along with adequate amount of bond and sureties and on verification of the documents, particularly, registration and the renewed insurance, appropriate order be passed for release of the vehicle in question in favour of the petitioner with a rider that the petitioner will take prior permission of the learned trial court, if he gets inclined to sell the vehicle in question or modify its structure and produce the same as and when required by the learned trial court. The whole exercise should be completed within a period of two weeks from the date of receipt/production of a copy of this order.

With the aforesaid observation/direction, this application stands disposed of.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	.../05/2017
Transmission Date	.../05/2017

